

# SENATE MOTION

## MADAM PRESIDENT:

**I move** that Engrossed House Bill 1116 be amended to read as follows:

- 1 Delete the title and insert the following:
- 2 A BILL FOR AN ACT to amend the Indiana Code concerning
- 3 health matters.
- 4 Page 1, between the enacting clause and line 1, begin a new
- 5 paragraph and insert:
- 6 "SECTION 1. IC 9-21-1-8 IS AMENDED TO READ AS
- 7 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 8. (a) This section
- 8 applies to the person who drives an authorized emergency vehicle
- 9 when:
- 10 (1) responding to an emergency call;
- 11 (2) in the pursuit of an actual or suspected violator of the law; or
- 12 (3) responding to, but not upon returning from, a fire alarm.
- 13 (b) The person who drives an authorized emergency vehicle may do
- 14 the following:
- 15 (1) Park or stand, notwithstanding other provisions of this article.
- 16 (2) Proceed past a red or stop signal or stop sign, but only after
- 17 slowing down as necessary for safe operation.
- 18 (3) Exceed the maximum speed limits if the person who drives the
- 19 vehicle does not endanger life or property.
- 20 (4) Disregard regulations governing direction of movement or
- 21 turning in specified directions.
- 22 (c) This section applies to an authorized emergency vehicle only
- 23 when the vehicle is using audible or visual signals as required by law.
- 24 An authorized emergency vehicle operated as a police vehicle is not
- 25 required to be equipped with or display red and blue lights visible from
- 26 in front of the vehicle.
- 27 (d) This section does not do the following:
- 28 (1) Relieve the person who drives an authorized emergency
- 29 vehicle from the duty to drive with due regard for the safety of all
- 30 persons.
- 31 (2) Protect the person who drives an authorized emergency

vehicle from the consequences of the person's reckless disregard for the safety of others.

**(3) Abrogate the immunity granted under IC 34-13-3-3.**

SECTION 2. IC 9-21-8-35 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 35. (a) Upon the immediate approach of an authorized emergency vehicle, when the person who drives the authorized emergency vehicle is giving audible signal by siren or displaying alternately flashing red, red and white, or red and blue lights, a person who drives another vehicle shall do the following unless otherwise directed by a law enforcement officer:

(1) Yield the right-of-way.

(2) Immediately drive to a position parallel to and as close as possible to the right-hand edge or curb of the highway clear of any intersection.

(3) Stop and remain in the position until the authorized emergency vehicle has passed.

(b) Upon approaching a stationary authorized emergency vehicle, when the authorized emergency vehicle is giving a signal by displaying alternately flashing red, red and white, or red and blue lights, a person who drives an approaching vehicle shall:

(1) proceeding with due caution, yield the right-of-way by making a lane change into a lane not adjacent to that of the authorized emergency vehicle, if possible with due regard to safety and traffic conditions, if on a highway having at least four (4) lanes with not less than two (2) lanes proceeding in the same direction as the approaching vehicle; or

(2) proceeding with due caution, reduce the speed of the vehicle, maintaining a safe speed for road conditions, if changing lanes would be impossible or unsafe.

(c) Upon approaching a stationary recovery vehicle or a stationary highway maintenance vehicle, when the vehicle is giving a signal by displaying alternately flashing amber lights, a person who drives an approaching vehicle shall:

(1) proceeding with due caution, yield the right-of-way by making a lane change into a lane not adjacent to that of the recovery vehicle or highway maintenance vehicle, if possible with due regard to safety and traffic conditions, if on a highway having at least four (4) lanes with not less than two (2) lanes proceeding in the same direction as the approaching vehicle; or

(2) proceeding with due caution, reduce the speed of the vehicle, maintaining a safe speed for road conditions, if changing lanes would be impossible or unsafe.

(d) This section does not operate to:

(1) relieve the person who drives an authorized emergency vehicle, a recovery vehicle, or a highway maintenance vehicle from the duty to operate the vehicle with due regard for the safety of all persons using the highway; **and**

1           **(2) abrogate the immunity granted under IC 34-13-3-3."**

2           Page 8, between lines 20 and 21, begin a new paragraph and insert:  
 3           "SECTION 6. IC 34-6-2-152 IS ADDED TO THE INDIANA CODE  
 4           AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 5           1, 2007]: **Sec. 152. "Willful or wanton misconduct", for purposes**  
 6           **of IC 34-13-3-3, means a course of action that:**

- 7           **(1) shows an actual or deliberate intention to cause harm; or**  
 8           **(2) if not intentional, shows indifference to or a conscious**  
 9           **disregard for the safety of other individuals or property.**

10          SECTION 7. IC 34-13-3-3, AS AMENDED BY P.L.47-2006,  
 11          SECTION 48, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 12          JULY 1, 2007]: Sec. 3. A governmental entity or an employee acting  
 13          within the scope of the employee's employment is not liable if a loss  
 14          results from the following:

- 15          (1) The natural condition of unimproved property.  
 16          (2) The condition of a reservoir, dam, canal, conduit, drain, or  
 17          similar structure when used by a person for a purpose that is not  
 18          foreseeable.  
 19          (3) The temporary condition of a public thoroughfare or extreme  
 20          sport area that results from weather.  
 21          (4) The condition of an unpaved road, trail, or footpath, the  
 22          purpose of which is to provide access to a recreation or scenic  
 23          area.  
 24          (5) The design, construction, control, operation, or normal  
 25          condition of an extreme sport area, if all entrances to the extreme  
 26          sport area are marked with:  
 27                  (A) a set of rules governing the use of the extreme sport area;  
 28                  (B) a warning concerning the hazards and dangers associated  
 29                  with the use of the extreme sport area; and  
 30                  (C) a statement that the extreme sport area may be used only  
 31                  by persons operating extreme sport equipment.

32          This subdivision shall not be construed to relieve a governmental  
 33          entity from liability for the continuing duty to maintain extreme  
 34          sports areas in a reasonably safe condition.

- 35          (6) The initiation of a judicial or an administrative proceeding.  
 36          (7) The performance of a discretionary function; however, the  
 37          provision of medical or optical care as provided in IC 34-6-2-38  
 38          shall be considered as a ministerial act.  
 39          (8) The adoption and enforcement of or failure to adopt or enforce  
 40          a law (including rules and regulations), unless the act of  
 41          enforcement constitutes false arrest or false imprisonment.  
 42          (9) An act or omission performed in good faith and without  
 43          malice under the apparent authority of a statute which is invalid  
 44          if the employee would not have been liable had the statute been  
 45          valid.  
 46          (10) The act or omission of anyone other than the governmental  
 47          entity or the governmental entity's employee.

(11) The issuance, denial, suspension, or revocation of, or failure or refusal to issue, deny, suspend, or revoke any permit, license, certificate, approval, order, or similar authorization, where the authority is discretionary under the law.

(12) Failure to make an inspection, or making an inadequate or negligent inspection, of any property, other than the property of a governmental entity, to determine whether the property complied with or violates any law or contains a hazard to health or safety.

(13) Entry upon any property where the entry is expressly or impliedly authorized by law.

(14) Misrepresentation if unintentional.

(15) Theft by another person of money in the employee's official custody, unless the loss was sustained because of the employee's own negligent or wrongful act or omission.

(16) Injury to the property of a person under the jurisdiction and control of the department of correction if the person has not exhausted the administrative remedies and procedures provided by section 7 of this chapter.

(17) Injury to the person or property of a person under supervision of a governmental entity and who is:

(A) on probation; or

(B) assigned to an alcohol and drug services program under IC 12-23, a minimum security release program under IC 11-10-8, a pretrial conditional release program under IC 35-33-8, or a community corrections program under IC 11-12.

(18) Design of a highway (as defined in IC 9-13-2-73), toll road project (as defined in IC 8-15-2-4(4)), tollway (as defined in IC 8-15-3-7), or project (as defined in IC 8-15.7-2-14) if the claimed loss occurs at least twenty (20) years after the public highway, toll road project, tollway, or project was designed or substantially redesigned; except that this subdivision shall not be construed to relieve a responsible governmental entity from the continuing duty to provide and maintain public highways in a reasonably safe condition.

(19) Development, adoption, implementation, operation, maintenance, or use of an enhanced emergency communication system.

(20) Injury to a student or a student's property by an employee of a school corporation if the employee is acting reasonably under a discipline policy adopted under IC 20-33-8-7(b).

(21) An error resulting from or caused by a failure to recognize the year 1999, 2000, or a subsequent year, including an incorrect date or incorrect mechanical or electronic interpretation of a date, that is produced, calculated, or generated by:

(A) a computer;

- 1 (B) an information system; or  
 2 (C) equipment using microchips;  
 3 that is owned or operated by a governmental entity. However, this  
 4 subdivision does not apply to acts or omissions amounting to  
 5 gross negligence, willful or wanton misconduct, or intentional  
 6 misconduct. For purposes of this subdivision, evidence of gross  
 7 negligence may be established by a party by showing failure of a  
 8 governmental entity to undertake an effort to review, analyze,  
 9 remediate, and test its electronic information systems or by  
 10 showing failure of a governmental entity to abate, upon notice, an  
 11 electronic information system error that caused damage or loss.  
 12 However, this subdivision expires June 30, 2003.
- 13 (22) An act or omission performed in good faith under the  
 14 apparent authority of a court order described in IC 35-46-1-15.1  
 15 that is invalid, including an arrest or imprisonment related to the  
 16 enforcement of the court order, if the governmental entity or  
 17 employee would not have been liable had the court order been  
 18 valid.
- 19 (23) An act taken to investigate or remediate hazardous  
 20 substances, petroleum, or other pollutants associated with a  
 21 brownfield (as defined in IC 13-11-2-19.3) unless:
- 22 (A) the loss is a result of reckless conduct; or  
 23 (B) the governmental entity was responsible for the initial  
 24 placement of the hazardous substances, petroleum, or other  
 25 pollutants on the brownfield.
- 26 **(24) The operation in accordance with IC 9-21-1-8(a) of an**  
 27 **authorized emergency vehicle (as defined in IC 9-13-2-6), if**  
 28 **the vehicle used a siren, an exhaust whistle, lights, or a bell as**  
 29 **required under IC 9-19-14, unless the operation of the vehicle**  
 30 **constituted willful or wanton misconduct of the operator of**  
 31 **the vehicle."**
- 32 Renumber all SECTIONS consecutively.  
 (Reference is to EHB 1116 as printed March 30, 2007.)

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Senator WEATHERWAX